
PRELIMINARY DRAFT
No. 3436

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2004 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 6-8-12; IC 6-8.1-1-1; IC 12-15-44.

Synopsis: Non-nutritive beverage tax. Imposes a tax of: (1) \$2 per gallon of syrup or simple syrup used to make non-nutritive beverage; (2) \$0.105 per gallon of bottled non-nutritive beverage; or (3) \$0.105 per gallon of powder based non-nutritive beverage; on a distributor, manufacturer, or wholesaler of non-nutritive beverages. Establishes and deposits tax revenue in the long term care continuum fund. Requires the office of Medicaid policy and planning to administer the fund. Provides that money in the fund is used to pay for certain Medicaid services.

Effective: July 1, 2004.



A BILL FOR AN ACT to amend the Indiana Code concerning taxation and to make an appropriation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-8-12 IS ADDED TO THE INDIANA CODE AS
2 A **NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY**
3 **1, 2004]:**

4 **Chapter 12. Non-Nutritive Beverage Tax**

5 **Sec. 1. As used in this chapter, "bottle" means a closed or sealed**
6 **glass, metal, paper, plastic, or other type of container of any size or**
7 **shape.**

8 **Sec. 2. As used in this chapter, "bottled non-nutritive beverage"**
9 **means a complete, ready to consume non-nutritive beverage**
10 **contained in a bottle.**

11 **Sec. 3. As used in this chapter, "department" refers to the**
12 **department of state revenue.**

13 **Sec. 4. As used in this chapter, "non-nutritive beverage" means**
14 **a nonalcoholic, naturally or artificially sweetened beverage sold for**
15 **human consumption. The term includes the following:**

16 (1) Ginger ale.

17 (2) Seltzer, soda, or tonic water.

18 (3) All drinks commonly referred to as cola, lemon, lime, or
19 lemon-lime.

20 (4) Fruit drinks containing less than ten percent (10%)
21 natural fruit juice.

22 (5) Vegetable drinks containing less than ten percent (10%)
23 natural vegetable juice.

24 (6) Other drinks commonly referred to as soft drinks, soda, or
25 soda pop, including diet soft drinks, diet soda, or diet soda
26 pop.

27 **Sec. 5. As used in this chapter, "person" includes an association,**
28 **a corporation, a fiduciary, an individual, a limited liability**
29 **company, a partnership, or a sole proprietorship.**

30 **Sec. 6. As used in this chapter, "powder" means a solid mixture**
31 **of basic ingredients used in making, mixing, or compounding**



1 non-nutritive beverages.

2 Sec. 7. As used in this chapter, "retailer" means a person that:

- 3 (1) is not a vendor; and
 4 (2) sells non-nutritive beverages, powder, or syrup to an
 5 ultimate consumer.

6 Sec. 8. As used in this chapter, "simple syrup" means a mixture
 7 of sugar and water.

8 Sec. 9. As used in this chapter, "syrup" means the liquid
 9 mixture of basic ingredients used in making, mixing, or
 10 compounding non-nutritive beverages.

11 Sec. 10. As used in this chapter, "vendor" means a distributor,
 12 manufacturer, or wholesaler who manufactures, bottles, sells,
 13 barter, exchanges, receives, stores or distributes non-nutritive
 14 beverages, simple syrup, syrup, or powder for resale purposes to:

- 15 (1) retailers; or
 16 (2) other distributors, manufacturers, or wholesalers.

17 Sec. 11. (a) Except as provided in section 12(b) of this chapter,
 18 an excise tax known as the non-nutritive beverage tax is imposed
 19 on each sale of syrup, simple syrup, powder or bottled
 20 non-nutritive beverage to a retailer in Indiana.

21 (b) The amount of the tax imposed under this section is
 22 determined as follows:

- 23 (1) Two dollars (\$2) per gallon of syrup or simple syrup.
 24 (2) Ten and one-half cents (\$0.105) per gallon of bottled
 25 non-nutritive beverage.
 26 (3) For a package or container of powder, ten and one-half
 27 cents (\$0.105) per gallon of non-nutritive beverage that may
 28 be produced from the package or container by following the
 29 manufacturer's directions.

30 (c) The non-nutritive beverage tax is imposed on a vendor at the
 31 time of each transaction described in subsection (a) and is payable
 32 according to the procedures set forth in section 13 of this chapter.

33 (d) The non-nutritive beverage tax is a listed tax for purposes of
 34 IC 6-8.1.

35 Sec. 12. (a) The non-nutritive beverage tax does not apply to the
 36 following:

- 37 (1) A solid mixture of ingredients used to prepare coffee or
 38 tea.
 39 (2) Water that does not contain calories or natural or
 40 artificial sweetener.
 41 (3) Milk or milk products.
 42 (4) A product intended for weight loss.
 43 (5) A product intended for consumption by infants.
 44 (6) A powder intended for the purpose of mixing non-nutritive
 45 beverages by the ultimate consumer.
 46 (7) Non-nutritive beverages, syrup, simple syrup, or powder



1 sold to the federal government.

2 (8) Non-nutritive beverages, syrup, simple syrup, or powder
3 exported from Indiana by a distributor, manufacturer, or
4 wholesaler.

5 (9) A frozen or freeze-dried concentrate to which only water
6 is added to produce a beverage containing at least ten percent
7 (10%) natural fruit or vegetable juice.

8 (10) A beverage containing at least ten percent (10%) natural
9 fruit or vegetable juice.

10 (b) The tax imposed under this chapter applies to the sale of
11 powder only if the powder is sold to a retailer that uses the powder
12 to produce a non-nutritive beverage for sale to an ultimate
13 consumer.

14 Sec. 13. Not later than the fifteenth day of each month, a vendor
15 shall do the following:

16 (1) File a return with the department on a form prescribed by
17 the department. The form must require the vendor to provide
18 the following information as applicable:

19 (A) Name, address, and telephone number of:

20 (i) the vendor; and

21 (ii) the retailer to whom non-nutritive beverages, syrup,
22 simple syrup, or powder were sold.

23 (B) Numbers and dates of invoices for sales of
24 non-nutritive beverages, syrup, simple syrup, and powder.

25 (C) Prices of non-nutritive beverages, syrup, simple syrup,
26 or powder that were sold to the retailer.

27 (D) The quantities of the non-nutritive beverages, syrup,
28 simple syrup, or powder sold to the retailer.

29 (2) Remit to the department an amount equal to:

30 (A) the amount of tax imposed under this chapter for
31 which the vendor is liable for the immediately preceding
32 month; minus

33 (B) the amount determined under section 14 of this
34 chapter.

35 Sec. 14. A vendor who timely complies with section 13 of this
36 chapter may deduct and retain from the tax imposed under section
37 11 of this chapter a collection allowance equal to one percent (1%)
38 of the amount of the vendor's tax liability for the immediately
39 preceding month. The department may reduce the collection
40 allowance of a vendor who fails to timely comply with section 13 of
41 this chapter by an amount that does not exceed the lesser of:

42 (1) ten percent (10%) of the collection allowance; or

43 (2) fifty dollars (\$50).

44 Sec. 15. The department shall refund to a vendor the amount of
45 taxes remitted under section 13 of this chapter for non-nutritive
46 beverages, syrup, simple syrup, or powder that is:



- (1) returned to the vendor; or
- (2) destroyed by the vendor in the presence of an employee or agent of the department.

Sec. 16. The taxes collected under this chapter shall be deposited in the long term care continuum fund established by IC 12-15-44-2.

Sec. 17. A vendor who knowingly:

- (1) makes a false statement in a return under section 13 of this chapter;
- (2) fails to pay the tax for which the vendor is liable under this chapter; or
- (3) otherwise fails to comply with this chapter;

commits a Class B misdemeanor. However, the offense is a Class D felony if it is committed with intent to evade the tax imposed under this chapter or to defraud the state.

Sec. 18. A vendor who fails to comply with IC 6-8.1-5-4 commits a Class B misdemeanor.

SECTION 2. IC 6-8.1-1-1, AS AMENDED BY P.L.192-2002(ss), SECTION 140, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. "Listed taxes" or "taxes" includes only the pari-mutuel taxes (IC 4-31-9-3 through IC 4-31-9-5); the riverboat admissions tax (IC 4-33-12); the riverboat wagering tax (IC 4-33-13); the gross income tax (IC 6-2.1) (repealed); the utility receipts tax (IC 6-2.3); the state gross retail and use taxes (IC 6-2.5); the adjusted gross income tax (IC 6-3); the supplemental net income tax (IC 6-3-8) (repealed); the county adjusted gross income tax (IC 6-3.5-1.1); the county option income tax (IC 6-3.5-6); the county economic development income tax (IC 6-3.5-7); the municipal option income tax (IC 6-3.5-8); the auto rental excise tax (IC 6-6-9); the financial institutions tax (IC 6-5.5); the gasoline tax (IC 6-6-1.1); the alternative fuel permit fee (IC 6-6-2.1); the special fuel tax (IC 6-6-2.5); the motor carrier fuel tax (IC 6-6-4.1); a motor fuel tax collected under a reciprocal agreement under IC 6-8.1-3; the motor vehicle excise tax (IC 6-6-5); the commercial vehicle excise tax (IC 6-6-5.5); the hazardous waste disposal tax (IC 6-6-6.6); the cigarette tax (IC 6-7-1); **the non-nutritive beverage tax (IC 6-8-12);** the beer excise tax (IC 7.1-4-2); the liquor excise tax (IC 7.1-4-3); the wine excise tax (IC 7.1-4-4); the hard cider excise tax (IC 7.1-4-4.5); the malt excise tax (IC 7.1-4-5); the petroleum severance tax (IC 6-8-1); the various innkeeper's taxes (IC 6-9); the various county food and beverage taxes (IC 6-9); the county admissions tax (IC 6-9-13 and IC 6-9-28); the oil inspection fee (IC 16-44-2); the emergency and hazardous chemical inventory form fee (IC 6-6-10); the penalties assessed for oversize vehicles (IC 9-20-3 and IC 9-30); the fees and penalties assessed for overweight vehicles (IC 9-20-4 and IC 9-30); the underground storage tank fee (IC 13-23); the solid waste management fee (IC 13-20-22); and any other tax or fee that the department is



required to collect or administer.

SECTION 3. IC 12-15-44 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]:

Chapter 44. Long Term Care Continuum Fund

Sec. 1. As used in this chapter, "fund" refers to the long term care continuum fund established by section 2 of this chapter.

Sec. 2. (a) The long term care continuum fund is established to pay the state's share of certain Medicaid services provided under Title XIX of the federal Social Security Act.

(b) The fund consists of money deposited in the fund under:

(1) IC 6-8-12; and

(2) subsection (d).

(c) The office of Medicaid policy and planning shall administer the fund.

(d) The treasurer of state shall invest money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested. Interest that accrues from these investments shall be deposited in the fund.

(e) The expenses of administering the fund shall be paid from money in the fund.

(f) Money in the fund at the end of a fiscal year does not revert to the state general fund but remains in the fund to be used for the purposes set forth in this section.

(g) Money in the fund is annually appropriated to the office of Medicaid policy and planning for the purposes set forth in section 3 of this chapter.

Sec. 3. Money in the fund shall be used to pay the state's share of Medicaid services provided under Title XIX of the federal Social Security Act as follows:

(1) Eighty percent (80%) to be divided as follows:

(A) Two-thirds (2/3) for community and home care services for the aged and physically disabled.

(B) One-third (1/3) for community and home care services for the developmentally disabled.

(2) Twenty percent (20%) for long term care services considered appropriate by the office of Medicaid policy and planning. Money may be used under this subdivision to pay for services described in subdivision (1).

Sec. 4. Money in the fund must be used to supplement state spending for Medicaid services provided under Title XIX of the federal Social Security Act that are described in section 3 of this chapter. Notwithstanding any other law, the money in the fund may not be used to reduce or replace the amount of state money from the state general fund or any other source used after December 31, 2003, to reimburse the providers of Medicaid



1 services under Title XIX of the federal Social Security Act that are
2 described in section 3 of this chapter.

3 **Sec. 5.** All federal financial participation that is obtained due to
4 an expenditure under section 3 of this chapter shall be expended
5 for Medicaid services under Title XIX of the federal Social
6 Security Act that are described in section 3 of this chapter.

7 SECTION 4. [EFFECTIVE JULY 1, 2004] IC 6-8-12, as added by
8 this act, applies to a sale of a non-nutritive beverage, syrup, simple
9 syrup, or powder occurring after June 30, 2004.

